IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

C.R.No.3466 OF 2005

Date of decision : 9.10.2006

State of Haryana and others .....Petitioners

versus

Smt.Santra Devi .....Respondent

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA.

Present: Mr.Madan Gupta, Sr.DAG, Haryana for the petitioners.
Mr.Rajesh Arora, Advocate for the respondent.

ORDER

HEMANT GUPTA, J (Oral)

The challenge in the present revision petition is to the order passed by the learned District Judge, dated 16.2.2005, whereby delay of 208 days in filing of appeal against the judgment and decree dated 15.5.2004, passed by the learned trial Court, was dismissed.

The plaintiff-respondent has filed a suit for declaration with consequential relief of permanent and mandatory injunction to the effect that the penal rent on account of non vacation of official accommodation cannot be claimed from the plaintiff. The said suit was decreed by the learned trial Court.

The judgment and decree passed by the learned trial Court was challenged before the First Appellant Court by way of filing an appeal alongwith an application for condonation of delay on the ground that the decision of the suit came into the notice of the defendants in the month of September, 2004 and thereafter after obtaining instructions of the Legal Remembrancer, Haryana, appeal was filed. There is a delay of 208 days in filing the appeal which is on account of sufficient cause. Said application was declined by the learned District Judge on the ground that the affidavit is

not sworn by the District Attorney, Gurgaon or any official of that office, in support of the averments made in the application, to seek condonation of delay. Still further, the application is not giving the precise day on which the instructions for filing of appeal were received from the Legal Remembrancer, Haryana.

After hearing the learned counsel for the parties, I am of the opinion that the approach of the learned District Judge in not condoning the delay of 208 days in filing the appeal suffers from patent illegality and cannot be sustained in law.

The case of the petitioners that information was received regarding the decision of the suit in September, 2004 is not rebutted in any manner. It is well settled that the decision in lis should be on merits and not on technicalities. By filing the appeal after some delay, the petitioners were not to gain anything. Mere negligence in taking steps for filing of appeal cannot be equated as lack of sufficient cause to seek condonation of delay.

In view of the above, the order dated 16.2.2005 of the learned District Judge is set-aside. The delay of 208 days in filing the appeal is condoned. The appeal is directed to be decided by the learned District Judge in accordance with law.

Parties through their counsel are directed to appear before the learned District Judge, Gurgaon on 20.11.2006, for further proceedings. The Civil Revision stands disposed of accordingly.

(HEMANT GUPTA)
JUDGE

October 9, 2006.
**mohinder*